1641.

SUPREME COURT OF THE UNITED STATES.

No. 70.

OLIVER & DANIEL R. GARRISON, APPELLANTS,

vs.

THE MEMPHIS INSURANCE COMPANY.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MISSOURI.

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MISSOURI DISTRICT, *sct.*

Pleas before the honorable Robert W. Wells, district judge of the United States for Missouri district, and one of the judges of the circuit court of the United States for Missouri district, and eighth circuit, on the day of October, A. D. 1855.

MEMPHIS INSURANCE COMPANY, compl't,
vs.
OLIVER GARRISON and DANIEL R. GARRISON, def'ts. } In chancery.

Be it remembered, that heretofore, to wit, on the twenty-fourth day of September, in the year eighteen hundred and fifty-one, came the complainant aforesaid, by E. and B. Bates, solicitors, and filed in the office of the clerk of the circuit court of the United States for Missouri district the following bill in chancery, viz:

Bill.

UNITED STATES OF AMERICA,
Missouri district, ss:

To the honorable the Circuit Court of the United States for the Missouri district, sitting in chancery.

The bill of complaint of "The Memphis Insurance Company," a corporation created by the authority of the State of Tennessee, (the stockholders or corporators whereof are citizens of the State of Tennessee,) complainant, against Oliver Garrison and Daniel R. Garrison, defendants, who are citizens of the State of Missouri, humbly complaining, the complainant by its solicitors showeth to the court, that the defendants were the owners of the steamboat called Convoy, on the tenth day of February, in the year eighteen hundred and forty-nine, and continued to be the owners thereof until the same was destroyed by fire on or about the twenty-seventh day of February, in the same year, as hereinafter stated; that said steamboat, on or about said day, whilst engaged in navigating the waters of the Mississippi river, and proceeding on a voyage from Memphis and other ports on the Mississippi river, to the port of New Orleans, was destroyed by fire, together with its cargo, including a large number of bales of cotton which had been shipped at Memphis and other places, to be carried on board of said steamboat to New Orleans. And the complainant, at and before (and since) the time of the destruction of the said steamboat and its cargo by fire, was engaged in the business of insuring, among other things, goods shipped on steamboats to be carried from place to place, against losses by the dangers of navigation, fire, and other perils; and, in fact, before the destruction of said boat and its cargo by fire, as aforesaid, there had been shipped on board said steamboat by different per-

sons at Memphis, and other ports on the Mississippi river, the quantity of eleven hundred and fifty-two bales of cotton, of the value of thirty-four thousand five hundred and sixty dollars, to be carried on board of said boat to the port of New Orleans, and there delivered to different persons to whom the same was consigned. Which said eleven hundred and fifty-two bales of cotton was insured by the complainant against loss by fire, (among other perils,) at the sum of thirty dollars per bale, and said cotton was on board of said boat at the time of its loss by fire, and was, with said boat, destroyed by fire; and afterwards said complainant, being liable therefor, paid to the several owners of said cotton so lost by fire, its value, insured by the complainant as aforesaid, amounting in the aggregate to the sum of thirty-four thousand five hundred and sixty dollars; which said payment was made on or about the first day of May, in the year eighteen hundred and forty-nine. And the complainant further states, that the defendants, upon the shipment of said cotton on board of said boat, gave bills of lading for each several shipment thereof, signed by the clerk of said boat, whereby the defendants bound themselves to deliver said cotton at the port of New Orleans to the consignees named in the said bills of lading; in several of the said bills of lading the dangers of the river only being excepted, and in others, the dangers of the river and of fire being excepted. And for further particularity, the complainant states, that the several shipments were made and bills of lading given in accordance therewith, as follows:

First. Twenty-five bales of cotton, shipped at Memphis, by Titus & Co., for account of Samuel Watson, to be delivered at New Orleans, the dangers of the river only excepted, unto Rawlings, Evans & Co., as more fully appears by the bill of lading herewith exhibited, and marked (No. 1.)

Second. One hundred and fifty-seven bales of cotton, shipped at Memphis, by S. & A. Fowlkes & Co., to be delivered at New Orleans, the dangers of the river only excepted, unto Fearn, Donegan & Co., as more fully appears by the bill of lading, for one hundred and sixty bales of cotton, herewith exhibited and marked (No. 2.)

Third. One hundred and seventy-two bales of cotton, shipped at Memphis, by S. & A. Fowlkes & Co., to be delivered at New Orleans, the dangers of the river only excepted, unto Fellows, Johnson & Co., as more fully appears by the bill of lading, marked (No. 3.)

Fourth. Twenty-four bales of cotton, shipped at or near Delta, by J. M. Dye, (eighteen bales, part thereof, for account of R. P. Lowels; and six bales, part thereof, for account of J. H. Porter,) to be delivered at New Orleans, the dangers of the river only excepted, unto John Williams, as more fully appears by the bill of lading herewith exhibited, and marked (No. 4.)

Fifth. Ten bales of cotton, shipped at Friar's Point, by J. W. Malone, on account of Jonathan Cudd, to be delivered at New Orleans, the dangers of the river only excepted, unto John Williams, as more fully appears by the bill of lading herewith exhibited, and marked (No. 5.)

Sixth. Four bales of cotton, shipped at Memphis, by W. B. Thompson, to be delivered at New Orleans, the dangers of the river and unavoidable accidents only excepted, unto James Abernathy, as will more fully appear by the bill of lading herewith exhibited, and marked (No. 6.)

Seventh. Twenty-five bales of cotton, shipped at Memphis, by the steamer Pitser Miller, to be delivered at New Orleans, the dangers of the river and unavoidable accidents only excepted, unto John Williams, as more fully appears by a copy of the bill of lading herewith exhibited, and marked (No. 7.)

Eighth. Ninety-two bales of cotton, shipped on said boat while lying in the Mississippi river, by the steamboat Sam Walker, to be delivered at New Orleans, the dangers of the river and unavoidable accidents only excepted, unto John Williams, as more fully appears by a copy of the bill of lading, for one hundred and sixty-four bales, herewith exhibited, and marked (No. 8.)

Ninth. Fifty-three bales of cotton, shipped at or near Memphis, by the steamer Harry Bluff, to be delivered at New Orleans, the unavoidable dangers of the river and fire only excepted, unto John Williams, as more fully appears by the bill of lading herewith exhibited, and marked (No. 9.)

Tenth. Ninety-eight bales of cotton, shipped at Memphis, by J. M. Patrick, to be delivered at New Orleans, the dangers of the river and fire only excepted, unto John Williams, as more fully appears by the bill of lading herewith exhibited, and marked (No. 10.)

Eleventh. One hundred and seventeen bales of cotton, shipped at Memphis, by J. J. Harris (agent), to be delivered at New Orleans, the dangers of the river and fire only excepted, unto John Williams, as more fully appears by the bill of lading herewith exhibited, and marked (No. 11.)

Twelfth. Six bales of cotton, shipped at Helena, by Martin & Norton, on account of T. D. M. Compton, to be delivered at New Orleans, the dangers of the river and fire only excepted, unto P. H. Skipwith, as more fully appears by the bill of lading herewith exhibited, and marked (No. 12.)

Thirteenth. One hundred and forty-eight bales of cotton, shipped at Memphis, by H. H. Means & Co., to be delivered at New Orleans, the dangers of the river and fire only excepted, unto Fellows, Johnson & Co., as more fully appears by the bill of lading herewith exhibited, and marked (No. 13.)

Fourteenth. One hundred bales of cotton, shipped at Memphis, by Hill & Mitchell, to be delivered at New Orleans, the unavoidable dangers of the river and fire only excepted, unto Robson & Allen, as more fully appears by the bill of lading herewith exhibited, and marked (No. 14.)

Fifteenth. One hundred and twenty-one bales of cotton, shipped at Memphis, by Allen & Apperson, to be delivered at New Orleans, the unavoidable dangers of the river navigation and fire excepted, unto

sons at Memphis, and other ports on the Mississippi river, the quantity of eleven hundred and fifty-two bales of cotton, of the value of thirty-four thousand five hundred and sixty dollars, to be carried on board of said boat to the port of New Orleans, and there delivered to different persons to whom the same was consigned. Which said eleven hundred and fifty-two bales of cotton was insured by the complainant against loss by fire, (among other perils,) at the sum of thirty dollars per bale, and said cotton was on board of said boat at the time of its loss by fire, and was, with said boat, destroyed by fire; and afterwards said complainant, being liable therefor, paid to the several owners of said cotton so lost by fire, its value, insured by the complainant as aforesaid, amounting in the aggregate to the sum of thirty-four thousand five hundred and sixty dollars; which said payment was made on or about the first day of May, in the year eighteen hundred and forty-nine. And the complainant further states, that the defendants, upon the shipment of said cotton on board of said boat, gave bills of lading for each several shipment thereof, signed by the clerk of said boat, whereby the defendants bound themselves to deliver said cotton at the port of New Orleans to the consignees named in the said bills of lading; in several of the said bills of lading the dangers of the river only being excepted, and in others, the dangers of the river and of fire being excepted. And for further particularity, the complainant states, that the several shipments were made and bills of lading given in accordance therewith, as follows:

First. Twenty-five bales of cotton, shipped at Memphis, by Titus & Co., for account of Samuel Watson, to be delivered at New Orleans, the dangers of the river only excepted, unto Rawlings, Evans & Co., as more fully appears by the bill of lading herewith exhibited, and marked (No. 1.)

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Third. One hundred and seventy-two bales of cotton, shipped at Memphis, by S. & A. Fowlkes & Co., to be delivered at New Orleans, the dangers of the river only excepted, unto Fellows, Johnson & Co., as more fully appears by the bill of lading, marked (No. 3.)

Fourth. Twenty-four bales of cotton, shipped at or near Delta, by J. M. Dye, (eighteen bales, part thereof, for account of R. P. Lowels; and six bales, part thereof, for account of J. H. Porter,) to be delivered at New Orleans, the dangers of the river only excepted, unto John Williams, as more fully appears by the bill of lading herewith exhibited, and marked (No. 4.)

Fifth. Ten bales of cotton, shipped at Friar's Point, by J. W. Malone, on account of Jonathan Cudd, to be delivered at New Orleans, the dangers of the river only excepted, unto John Williams, as more fully appears by the bill of lading herewith exhibited, and marked (No. 5.)

Sixth. Four bales of cotton, shipped at Memphis, by W. B. Thompson, to be delivered at New Orleans, the dangers of the river and unavoidable accidents only excepted, unto James Abernathy, as will more fully appear by the bill of lading herewith exhibited, and marked (No. 6.)

Seventh. Twenty-five bales of cotton, shipped at Memphis, by the steamer Pitser Miller, to be delivered at New Orleans, the dangers of the river and unavoidable accidents only excepted, unto John Williams, as more fully appears by a copy of the bill of lading herewith exhibited, and marked (No. 7.)

Eighth. Ninety-two bales of cotton, shipped on said boat while lying in the Mississippi river, by the steamboat Sam Walker, to be delivered at New Orleans, the dangers of the river and unavoidable accidents only excepted, unto John Williams, as more fully appears by a copy of the bill of lading, for one hundred and sixty-four bales, herewith exhibited, and marked (No. 8.)

Ninth. Fifty-three bales of cotton, shipped at or near Memphis, by the steamer Harry Bluff, to be delivered at New Orleans, the unavoidable dangers of the river and fire only excepted, unto John Williams, as more fully appears by the bill of lading herewith exhibited, and marked (No. 9.)

Tenth. Ninety-eight bales of cotton, shipped at Memphis, by J. M. Patrick, to be delivered at New Orleans, the dangers of the river and fire only excepted, unto John Williams, as more fully appears by the bill of lading herewith exhibited, and marked (No. 10.)

Eleventh. One hundred and seventeen bales of cotton, shipped at Memphis, by J. J. Harris (agent), to be delivered at New Orleans, the dangers of the river and fire only excepted, unto John Williams, as more fully appears by the bill of lading herewith exhibited, and marked (No. 11.)

Twelfth. Six bales of cotton, shipped at Helena, by Martin & Norton, on account of T. D. M. Compton, to be delivered at New Orleans, the dangers of the river and fire only excepted, unto P. H. Skipwith, as more fully appears by the bill of lading herewith exhibited, and marked (No. 12.)

Thirteenth. One hundred and forty-eight bales of cotton, shipped at Memphis, by H. H. Means & Co., to be delivered at New Orleans, the dangers of the river and fire only excepted, unto Fellows, Johnson & Co., as more fully appears by the bill of lading herewith exhibited, and marked (No. 13.)

Fourteenth. One hundred bales of cotton, shipped at Memphis, by Hill & Mitchell, to be delivered at New Orleans, the unavoidable dangers of the river and fire only excepted, unto Robson & Allen, as more fully appears by the bill of lading herewith exhibited, and marked (No. 14.)

Fifteenth. One hundred and twenty-one bales of cotton, shipped at Memphis, by Allen & Apperson, to be delivered at New Orleans, the unavoidable dangers of the river navigation and fire excepted, unto

Robson & Allen, as more fully appears by the bill of lading herewith exhibited, and marked (No. 15.)

And the complainant states, that by reason of the shipment on said boat of the cotton referred to above, firstly, secondly, thirdly, fourthly, fifthly, sixthly, seventhly, and eighthly, amounting to five hundred and nine bales, and the insurance of it by the complainant, and its loss by fire upon said boat, and the payment of its value to the owners thereof, the complainant became equitably entitled to receive of the defendants the value thereof so paid by the complainant, at the time of that payment, which was on or about the first day of May, in the year eighteen hundred and forty-nine, and the sum paid was fifteen thousand two hundred and seventy dollars.

And the complainant further states, that the destruction of the said steamboat and its cargo by fire was caused by the negligence and carelessness of the officers and crew of said boat, who were the servants of the defendants.

And the complainant further states, that by reason of the shipment on said boat of the cotton referred to above, ninthly, tenthly, eleventhly, twelfthly, thirteenthly, fourteenthly, and fifteenthly, amounting to six hundred and forty-three bales, and the insurance of it by the complainant, and its loss by fire upon said boat, caused by the negligence and carelessness of the officers and crew of the said boat, who were the servants of the defendants, and the payment of its value by the complainant to the owners thereof as aforesaid, the complainant became at the time of said payment, which was on or about the first day of May, in the year eighteen hundred and forty-nine, entitled to receive of the defendants the value thereof so paid by the complainant, which was the sum of nineteen thousand two hundred and ninety dollars.

Wherefore the complainant prays that the said defendants be summoned to appear to this its bill of complaint, and be required to answer the interrogatories hereunto appended, and that the defendants be compelled by the decree of this court to pay to the complainant the amount paid by it as aforesaid upon its said insurance of all said cotton so destroyed by fire as aforesaid on said steamboat, that is, the sum of thirty-four thousand five hundred and sixty dollars, together with interest thereon from the time it was paid by the complainant; and that the court will grant such other and further relief as the nature of the case may require, and to the court shall seem meet; and the complainant will ever pray, &c.

E. & B. BATES,
Complainant's Sol'rs.

Interrogatories to be answered by the Defendants.

1. Was not the steamboat Convoy and its cargo destroyed by fire on or about the twenty-seventh day of February, in the year eighteen hundred and forty-nine?

2. Were you not the owners of the steamboat Convoy on the tenth day of February, in the year eighteen hundred and forty-nine, and did

you not continue to be the owners thereof from that time to the time of its destruction by fire?

E. & B. BATES,
Complainant's Sol'rs.

Upon filing the foregoing bill the following order was made, viz:

Subpœna awarded.

In vacation, September 24th, 1851.

THE MEMPHIS INSURANCE COMPANY, compl't, ag'st OLIVER GARRISON & DANIEL R. GARRISON, def'ts. } In chancery.

This day comes the compl't, by Messrs. E. & B. Bates, solicitors, and on their motion a subpœna in chancery is awarded against the above named defendants in this cause, upon bill this day filed; said subpœna to be returnable to rules to be held in clerk's office on first Monday in November next, which said subpœna is as follows, to wit:

Subpœna in Chancery.

MISSOURI DISTRICT, *sct.*

The President of the United States to Oliver Garrison and Daniel R. Garrison, greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States for the district of Missouri, on the first Monday of November next, at the city of St. Louis, then and there to answer the bill of complaint of the Memphis Insurance Company, a corporation created by the authority of the State of Tennessee, the stockholders or corporators whereof are citizens of the State of Tennessee, filed against you on the 24th day of September, 1851; hereof fail not.

[SEAL.] Witness the honorable Roger B. Taney, chief justice of the United States, the 25th day of September, 1851.

Issued at office, in the city of St. Louis, under the seal of said court, the day and year last aforesaid.

BEN. F. HICKMAN, *Clerk.*

Memo.—The defendants to enter their appearance in this suit, in the clerk's office, on or before the day at which the writ is returnable; otherwise the bill may be taken pro confesso.

BEN. F. HICKMAN, *Clerk.*

Upon the foregoing subpœna the marshal made the following return, viz:

Marshal's Return.

I certify that I executed the within by delivering a true copy thereof, and also of the complainant's bill, to the defendant, Oliver Garrison,

in person, and also by delivering a true copy of the within summons to the defendant, Daniel R. Garrison, in person.

Thus done at the city of St. Louis, in the district of Missouri, this 26th day of Sept., A. D. 1851.

JNO. W. TWICHELL,
U. S. Marshal, Mo. Dist.

Afterwards, at rules, begun and held in the clerk's office, in the city of St. Louis, on the first Monday, being the third day of November, 1851, the following proceedings were had herein, to wit:

Appearance entered.

THE MEMPHIS INSURANCE COMPANY, compl't,
ag'st
OLIVER GARRISON & DANIEL R. GARRISON, def'ts. } In chancery.

This day come def's, Oliver and Dan'l R. Garrison, by Mr. Gantt, their solicitor, and enter their appearance to complainant's bill.

And afterwards, at the April term, 1852, of our United States circuit court, on the 5th day of April, 1852, the following further proceedings were had herein, viz:

Order filing Answer.

THE MEMPHIS INSURANCE COMPANY, compl't,
ag'st
OLIVER GARRISON & DANIEL R. GARRISON, def'ts. } In chancery.

The defendants, Daniel R. and Oliver Garrison, by solicitor, come and file their answer, joint and several to the bill of complaint against them in this cause, which answer is sworn to by defendant, Oliver Garrison.

Which said answer is as follows, viz:

Answer of Defendants.

THE MEMPHIS INSURANCE COMPANY, complainant,
vs.
OLIVER GARRISON & DANIEL R. GARRISON, respondents. }

In the Circuit Court of the United States for the district of Missouri, April Term, '52.

The joint and several answer of the said Daniel R. and Oliver Garrison, to the bill of complaint above described:

These defendants, for answer to the said bill of complaint, admit that is true that they were the owners of the steamboat Convoy, on the tenth day of February, in the year eighteen hundred and forty-nine, and so continued to be the owners thereof until the said boat was destroyed by fire, which destruction of the said steamboat Convoy by fire took place, as they are informed and believe, sometime in the month of February, in the year eighteen hundred and forty-nine. They also

admit, that the steamboat Convoy had on board, at the time of her said destruction by fire, a number of bales of cotton, whereof the list set forth in the bill of complaint may be a correct statement; but of this defendants have no personal or other knowledge, and pray that the same may be established by competent evidence, if it should be deemed essential to the case of the plaintiffs. They admit it to be true, that at the time of the destruction of said steamboat Convoy by fire, she was engaged in navigating the river Mississippi, between Memphis to New Orleans. Defendants know nothing of the alleged insurance by the plaintiff against loss by fire and other perils of the cotton which was on board of the steamboat Convoy at the time of her destruction by fire, nor of the payment by said plaintiff of the amount insured thereon. But the defendants say, that their agents and servants in charge of the steamboat Convoy specially excepted them from all liability for loss to the owners of said cotton, accruing by reason of the dangers of the river; and that fire is one of the dangers of the river, and therefore that defendants are not liable for any loss accruing to the owners of said cotton, by fire, during the voyage contemplated in the several bills of lading.

Defendants say, that it will be seen that the said bills of lading are, some of them, expressed to be for the delivery of the cotton therein specified, "the dangers of the river and fire only excepted;" and others of the said bills of lading are expressed to be for the delivery of the cotton therein specified, "the dangers of the river and unavoidable accidents only excepted;" and others again are expressed to be for the delivery of the cotton therein specified, "the dangers of the river only excepted." That these differences amount to this and no more, to wit: They show that the different shipping merchants couch their bills of lading in phraseology to suit themselves, but that all their bills of lading amount to and mean the same thing. That the bill of lading was in each case drawn up by the shipping merchant, and is not furnished by the owners, officers, or crew of the Convoy; that the clerk of the vessel, by signing the bill of lading, adopted it, but did not enlarge its meaning by signing some others of different form; and that all the bills of lading mentioned in complainant's bill of complaint contain the same exception, the difference being, that in some of them there is an expression of what is merely understood in the others: that fire is among the dangers of the navigation of the river Mississippi by steamboats, and that the exception of the perils of river navigation is as broad as would be an exception of all the several perils comprehended under that general head.

Defendants admit, that they are only exempted from liability on account of losses growing out of the excepted perils, and being such as did not happen by reason of any carelessness, negligence, or default of them, their agents and servants; and defendants aver, that the fire by which the said Convoy was destroyed was not caused by the default, negligence, or carelessness of their said agents and servants, (the officers and crew of the Convoy,) but was owing to unavoidable casualty

growing out of the common accidents of the River Mississippi and the conveyance thereon of cotton in steamboats, all of which will more fully appear by the protest made by the captain and crew of the Convoy, before William C. Coffin, a notary public of Adams county, in the State of Mississippi, on the day following the destruction of said boat by fire.

And having thus answered, the said defendants pray to be hence dismissed, with their reasonable costs.

R. M. FIELD,
TH. T. GANTT, *p. d.*

Oliver Garrison being duly sworn, says, on *their* oaths, that the aforegoing answer, as far as the same is therein stated to be within the knowledge of the defendants, is true, and, so far as the same is stated to be made upon information derived from others, they believe it to be true.

OLIVER GARRISON.

Sworn to by Oliver Garrison, before me, this 17th day of March, 1852.

BEN. F. HICKMAN,
U. S. Commissioner for Missouri district.

Afterwards, at the term last aforesaid of our said court, on Friday, April 9th, 1852, the following further proceedings were had herein, viz:

Motion to reform Answer.

THE MEMPHIS INSURANCE COMPANY, compl't,
ag'st
OLIVER GARRISON & DANIEL R. GARRISON, def'ts. } In chancery.

The compl't, by solicitor, comes and moves the court to reform the joint and several answer of the defendants, filed herein at the present term, by striking out and expunging therefrom all the matters contained in said answer, except only such parts of said answer as are responsive to the two interrogatories noted at the foot of the bill, and which the defendants are specially required to answer. Said motion is as follows, to wit:

U. S. C. Court--Apl. Term, 1852.

THE MEMPHIS INSURANCE COMPANY
vs.
OLIVER GARRISON & DANIEL R. GARRISON.

The plaintiff moves the court to reform the joint and several answer of the defendants filed herein, at this present term, by striking out, and expunging therefrom, all the matters contained in said answer, except only such parts of said answer as are responsive to the two interrogatories noted at the foot of the bill, and which the defendants are specially required to answer.

The Plaintiff, by E. & B. BATES.

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Afterwards, on Wednesday, April 28th, 1852, the following order was made herein, to wit:

Motion to reform answer of def'ts overruled.

THE MEMPHIS INSURANCE COMPANY, compl't,
agst.
OLIVER GARRISON & DANIEL R. GARRISON, def'ts. } In chancery.

This day comes compl't by solicitor, and the court being now sufficiently advised of and concerning the motion filed herein on the 9th day of April, inst., to reform the joint and several answer of the defendants, do now order that said motion be, and the same is hereby, overruled.

Afterwards at rules begun and held at the clerk's office, in the city of St. Louis, on the first Monday, being the third day of May, 1852, the following further proceedings were had herein, viz:

THE MEMPHIS INSURANCE COMPANY, compl't,
agst.
OLIVER & DANIEL R. GARRISON, def'ts. } In chancery.

This day comes compl'ts by solicitor, and filed their replication to the answer of the defendants; said replication is in the following words and figures, to wit:

Replication.

THE MEMPHIS INSURANCE COMPANY, complainant,
vs.
OLIVER GARRISON and DANIEL R. GARRISON, defendants.

In the Circuit Court of the United States for the Missouri district, in Chancery, at May Rules, 1852.

The replication of the complainant to the answer of the defendants.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct; and humbly prays as in and by its said bill it hath already prayed.

E. & B. BATES, *Sol's.*

Afterwards, at the October term, 1852, of our said court, on Tuesday, October 5th, 1852, the following further proceedings were had herein, to wit:

Exhibits withdrawn.

MEMPHIS INSURANCE COMPANY, complainant,
agst.
OLIVER GARRISON, &c., defendant. } In chancery.

This day comes complainant by solicitor, and on his motion leave is given him to withdraw exhibits filed with the bill in this cause, for purpose of making proof of same, upon leaving copies or memorandums of said exhibits.

On the 6th day of April, 1853, the following agreement was filed in this cause, to wit:

Agreement.

MEMPHIS INS. CO.
vs.
D. R. & O. GARRISON.

In the U. S. Circuit Court.

In this cause it is agreed that the different bills of lading signed by the clerk of the Convoy for the cotton received on board, and the greater part of which was burned on the 27th February, 1849, were furnished by the shippers of each parcel of cotton, and signed by the clerk, upon ascertaining the correctness of the number of bales mentioned in each respective bill of lading.

E. & B. BATES, *for Compl't.*
THOS. T. GANTT, *P. D.*

And afterwards, at the April term, 1853, of our said court, on Monday, April 18th, the following further proceedings were had herein, to wit:

MEMPHIS INSURANCE COMPANY, complainant,
agst.
OLIVER GARRISON & others, defendants. } In chancery.

This day come the parties by their solicitors, and, by consent, this cause is continued, and, by further consent, the time for taking depositions on behalf of both complainant and defendants is extended until the 1st day of the next April term of this court.

Afterwards, at the October term, 1855, of our said court, on the 19th day of October, the following further proceedings were had herein, to wit:

Cause set for hearing.

MEMPHIS INSURANCE COMPANY, complainant,
agst.
OLIVER GARRISON, &c., defendants. } In chancery.

This day come the parties by their solicitors, and, by consent, this cause is set for hearing at the present term of this court.

And on the same day, viz., the 19th day of October, 1855, the following agreement was filed:

1647

Agreement.

THE MEMPHIS INSURANCE COMPANY
against
DANIEL R. & OLIVER GARRISON.

In the United States Circuit Court for Missouri.

1st. In this cause it is agreed that the bills shall be dismissed, as to the relief sought in respect of the cotton for which the bills of lading given by the clerk of the Convoy specifically exempted the vessel from liability for loss by fire.

2d. It is also agreed that the fire by which the steamboat Convoy was destroyed, did not arise from any negligence or fault of the master, crew, officers, or agents of the Convoy or of her owners.

3d. And the claim of the plaintiffs is declared to rest upon the construction to be given to the bills of lading, in which the vessel is merely exempted from "the dangers of the river," "the dangers of river navigation," and "the dangers of the river and unavoidable accidents."

4th. It is also agreed, that in the case of each of the shipments destroyed on the Convoy by fire in 1849, (February,) the bills of lading were furnished by the shipper, ready filled up, and were signed (as proved by the depositions) by the clerk or other officer of the Convoy.

Signed—(the word "not" being interlined between the 9th and 10th lines of this page, and the word "merely" between the 14th and 15th lines, before signing.)

If in the construction of the bills of lading mentioned in the 3d clause above, the court should hold that the defendants were liable for the loss of the goods by fire, then a decree shall be entered for the amount of the insurance paid on the shipments for which those bills of lading were given, provided the court should hold that the complainant was entitled to sue therefor, otherwise a decree for defendants.

BARTON BATES, *for Compl't.*
THOS. T. GANTT, *for Def'ts.*

Afterwards, on the 22d day of October, 1855, the following further proceedings were had herein, to wit:

Hearing commenced.

MEMPHIS INSURANCE COMPANY, compl't,
ag'st
OLIVER GARRISON, &c., defendants.
} In chancery.

This day come the parties by their solicitors, and the hearing of this cause was commenced, and not being concluded at the hour of adjournment, further proceedings are continued until to-morrow morning.

On the 23d day of October, 1855, the following further proceedings were had herein, to wit:

Cause submitted.

MEMPHIS INSURANCE COMPANY, complainant, ag'st OLIVER GARRISON, &c., defendants. } In chancery.

This day come the parties by their solicitors, and the hearing of this cause was resumed and concluded, and submitted to the court for a decree, but the court, not being sufficiently advised, took time to consider.

Afterwards, on the 24th day of October, 1855, the following further proceedings were had herein, viz:

Decree.

MEMPHIS INSURANCE COMPANY, compl't, ag'st OLIVER GARRISON, &c., defendants. } In chancery.

This day come the parties, by their solicitors, and the court being now sufficiently advised of and concerning the matters involved and submitted in this cause, enters the following decree, viz: "This cause came on to be heard at this term, and by consent of parties the bill was dismissed as to all the relief sought in respect to the cotton, for which the bills of lading given by the clerk of the Convoy specifically exempted the vessel from liability for loss by fire, and the cause was argued by counsel, and thereupon, and upon consideration thereof, it was ordered, adjudged, and decreed, that the defendants, Oliver Garrison and Daniel R. Garrison, do pay to the complainant the sum of sixteen thousand one hundred and sixty-four dollars and five cents, being the amount paid by complainant upon the cotton mentioned in the bills of lading, signed by the clerk of the Convoy, which contain the exception only of the "dangers of the river," being the first five in the bill of complaint particularly mentioned; and that the defendants do also pay to the complainant its costs about this suit expended, and that the complainant have execution for said sum and costs; and the court doth further decree, that the bill be dismissed as to the relief sought in respect to the bills of lading, in which "dangers of the river and unavoidable accidents are excepted," being the bills of lading, sixthly, seventhly and eighthly, in the bill of complaint particularly mentioned.

And on the same day as last aforesaid, (October 24th, 1855,) the following other order was made in this cause, to wit:

Appeal allowed.

MEMPHIS INSURANCE COMPANY, complainant, ag'st OLIVER GARRISON, &c., defendants. } In chancery.

This day come again the defendants, by their solicitor, and pray an appeal from the decree rendered in this cause to the Supreme Court of

the United States, which is allowed, and bond in the penalty of twenty thousand dollars, executed by Oliver Garrison and Daniel R. Garrison, as principals, and Isaac L. Garrison and William H. Barksdale, as sureties, which bond is approved by the court and filed with the papers in the cause.

Said appeal bond is as follows, viz:

Appeal Bond.

Circuit Court of the United States for the eighth circuit and Missouri district.

THE MEMPHIS INSURANCE COMPANY ag'st OLIVER GARRISON & DANIEL R. GARRISON. } On appeal.

Know all men by these presents, that we, Oliver Garrison and Daniel R. Garrison, as principals, and Isaac L. Garrison and William H. Barksdale, as sureties, are held and firmly bound unto the Memphis Insurance Company in the sum of twenty thousand dollars, and for the payment of which, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 24th day of October, 1855.

Whereas, the above named Oliver Garrison and Daniel R. Garrison have this day prayed an appeal in the above entitled cause to the Supreme Court of the United States, to reverse the decree rendered this day in said cause by the circuit court of the United States for the Missouri district, said decree being for the sum of sixteen thousand one hundred and sixty-four dollars and five cents, and the costs of said suit:

Now, therefore, the condition of this obligation is such, that if the above named Oliver Garrison and Daniel R. Garrison shall well and truly prosecute the appeal to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation to be void, otherwise the same shall be and remain in full force and virtue.

OLIVER GARRISON, [SEAL.]
D. R. GARRISON, [SEAL.]
ISAAC L. GARRISON, [SEAL.]
W. H. BARKSDALE, [SEAL.]

Signed and acknowledged by each of the above named obligors in open court, this 24th October, 1855, and approved by the court.

BEN. F. HICKMAN, *Clerk.*

And afterwards, on the 31st day of October, 1855, the following further proceedings were had in this cause, to wit:

Order filing Agreement.

MEMPHIS INSURANCE COMPANY, complainant,
ag'st
OLIVER GARRISON, &c., defendants. } In chancery.

This day come again the parties by their solicitors, and file an agreement herein, which, by consent, is ordered to be made a part of the record in this cause.

Said agreement is as follows, viz:

Agreement of Counsel.

THE MEMPHIS INSURANCE COMPANY
vs.
OLIVER GARRISON & DANIEL R. GARRISON.

In this cause there were various depositions, but at the hearing the parties agreed that the cotton was shipped as stated in the bill; that the bills of lading were correctly set forth in the bill; and that the money for which the cotton was insured was paid by the plaintiff, as stated in the bill, on the first day of May, 1849. The parties also made and submitted the following agreement, to wit:

THE MEMPHIS INSURANCE COMPANY
against
DANIEL R. & OLIVER GARRISON.

In the United States Circuit Court for Missouri.

1st. In this cause it is agreed that the bill shall be dismissed as to all the relief sought in respect of the cotton for which the bill of lading given by the clerk of the Convoy specifically exempted the vessel from liability for loss by fire.

2d. It is also agreed that the fire by which the steamboat Convoy was destroyed did not arise from any negligence or fault of the master, crew, officers, or agents of the Convoy, or of her owners.

3d. And the claim of the plaintiff is declared to rest upon the construction to be given to the bills of lading, in which the vessel is merely exempted from the "dangers of river navigation," and the dangers of the river and unavoidable accidents.

4th. It is also agreed that in the case of each of the shipments destroyed on the Convoy by fire in 1849, (February,) the bills of lading were furnished by the shipper, ready filled up, and were signed (as proved by the depositions) by the clerk or other officer of the Convoy.

Signed—(the word "not" being interlined between the 9th and 10th lines of this page, and the word "merely" between the 14th and 15th lines, before signing.)

If in the construction of the bills of lading mentioned in the 3d clause above, the court should hold that the defendants were liable for the loss of the goods by fire, then a decree shall be entered for the amount of the insurance paid on the shipments for which those bills of

lading were given, provided the court should hold that the complainant was entitled to sue therefor; otherwise a decree for defendants.

BARTON BATES, *for Compl't.*
THOS. T. GANTT, *for Def'ts.*

And def'ts read the deposition of John Simonds in the following words, to wit:

Deposition of witnesses produced, sworn, and examined at the office of Thos. T. Gantt, in the city and county of St. Louis, State of Missouri, before me, James Taussig, a notary public duly commissioned and qualified within and for the county of St. Louis, State of Missouri, in a certain cause now pending in the circuit court of the United States for the Missouri district, between the Memphis Insurance Company, plaintiff, and Oliver Garrison and Daniel R. Garrison, defendants, on the part of the defendants.

Deposition of John Simonds.

John Simonds, of lawful age, being produced, sworn, and examined on behalf of the defendants, deposeth and saith:

Question. State whether you are familiar with the usages of river navigation on the Mississippi river, and with the usages as to insurance of risks on that river, and how long you have been familiar with them.

Answer. I am tolerably familiar with the customs and usages mentioned, and have been familiar with them since 1829 or 1830.

Question. State what are considered to be the dangers of the river, and particularly state whether fire is one of those dangers. (Question objected to by plaintiff's counsel.)

Answer. They are sinking, by coming in collision with snags or rocks; sinking, by coming in collision with other boats, and fire. These are the principal dangers. (Objected to by plaintiff's counsel.)

Question. According to the custom of steamboat clerks, captains, and shippers of freight, who prepares the bill of lading, and who signs it?

Answer. Ordinarily printed forms are used, and prepared by the shippers, and signed by the captain or clerk, and sometimes even by the mate, and sometimes by the agent of the boat ashore.

Question. State what relation you now bear to the insurance companies of this city, or to the board of underwriters of this city.

Answer. I am a stockholder in three or four insurance companies in this city; was a president in one or two of these companies; I am a director in the Citizen's Insurance Company at this time; I was president of the board of underwriters till within about a year past; I was president of the board from its creation to the time stated, being about two years.

Question. Is it usual to enumerate the different perils of the river in the exceptions in the bill of lading, or does the bill of lading merely state that the perils of the river are excepted?

Answer. The most usual form of bills of lading states, "the perils of the river and fire excepted," but I have known many cases where